

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:02CR419
)	
v.)	
)	
JEVAUGHN D. ERWIN,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's application (Filing No. 144) seeking a certificate of appealability with respect to the denial of his motion filed pursuant to 28 U.S.C. § 2255 (Filing Nos. 138 and 139), and the order (Filing No. 141) denying his motion (Filing No. 140) to alter or amend his judgment. Also pending is an application to proceed *in forma pauperis* (Filing No. 143). That application will be granted.

Title 28, United States Code, § 2253(c)(1)(B) provides:

Unless a circuit justice or judge
issues a certificate of
appealability, an appeal may not be
taken to the Court of Appeals from
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* * *

(B) the final order in a proceeding
under § 2255.

Section 2253(c)(2) provides:

A certificate of appealability may
issue under Paragraph (1) only if
the applicant has made a

substantial showing of the denial
of a constitutional right.

After reviewing the defendant's § 2255 motion, the response of the government and this Court's order and judgment denying that motion, the Court finds defendant has failed to make a substantial showing of the denial of a constitutional right, and his request for certificate of appealability will be denied. Accordingly,

IT IS ORDERED:

1) Defendant's application to proceed *in forma pauperis* is granted.

2) Defendant's application for certificate of appealability is denied.

DATED this 12th day of February, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court